

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MICHAEL GAONA, and ALESHEA
CHANEL THAMES,

Plaintiffs,

V.

WELLS FARGO BANK, and TIMOTHY
WELLS,

Defendants.

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CIVIL ACTION NO. SA-23-CA-00280-FB

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Before the Court is the Report and Recommendation of United States Magistrate Judge (docket no. 37), filed in the above captioned cause on February 13, 2025. This Report and Recommendation concerns Defendants’ Motion for Summary Judgment and Brief in Support. (Docket no. 25). To date, no objections to the Report and Recommendation have been received.¹

Plaintiffs Michael Gaona and Aleshea Chanel Thames assert three claims in total against Defendants Wells Fargo Bank and Timothy Wells. (Docket no. 1-1). Two pertain to Plaintiff Gaona and one as to Plaintiff Thames. (*Id.* at 5-7). As to Plaintiff Gaona, Plaintiffs claim that his termination constituted discrimination on the basis of his Texas Army National Guard (“TANG”) based leaves of absences, in violation of the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4311(a), and its state-law equivalent in the Texas Government Code (“TXSERRA”), Tex. Gov. Code Ann. § 437.2131. (*Id.* at 5-6). As to Plaintiff Thames, Plaintiffs claim

¹ Any party who desires to object to a Magistrate’s findings and recommendations must serve and file his, her or its written objections within fourteen days after being served with a copy of the findings and recommendation. 28 U.S.C. § 635(b)(1). If service upon a party is made by mailing a copy to the party’s last known address, “service is complete upon mailing.” FED. R. CIV. P. 5(b)(2)(C). If service is by electronic means, “service is complete upon transmission.” *Id.* at (E).


intentional infliction of emotional distress (“IIED”), alleging that her termination was “part of a scheme to fabricate a pretext for terminating Gaona’s employment on the basis of [his] service in the TANG.” (*Id.* at 7).

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). The Court has reviewed the Report and Recommendation and finds its reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge (docket no. 37) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Defendants’ Motion for Summary Judgment (docket no. 25) is GRANTED IN PART and DENIED IN PART. Specifically, Defendants’ motion is DENIED as to Plaintiff Gaona’s USERRA and TXSERRA claims, and GRANTED as to Plaintiff Thames’ IIED claim. Because IIED is Plaintiff Thames’ only claim, she is DISMISSED from this case. This case continues to be referred to the Magistrate Judge for further proceedings.

It is so ORDERED.

SIGNED this 4th day of March, 2025.



FRED BIERY
UNITED STATES DISTRICT JUDGE